

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/22/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000016

FILED: _____

STATE OF ARIZONA

BARTON J FEARS

v.

KRISTOPHER R CALIFANO

GEORGE M STERLING JR

PHX MUNICIPAL CT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8947261

Charge: POSSESSION OF DRUG PARAPHERNALIA

DOB: 07-09-1981

DOC: 06-13-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on September 10, 2001. The Court has considered the

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arguments by counsel, the memoranda submitted and the record of the proceedings from the Phoenix City Court.

Appellant, Christopher R. Califano, was accused of Using or Possessing with the Intent to Use Drug Paraphernalia, a class 1 misdemeanor, in violation of A.R.S. Section 13-3415(A). The crime was alleged to have occurred on June 13, 2000. Appellant filed a Motion to Suppress claiming an unlawful search and seizure from which the arresting officer discovered a pipe in Appellant's possession. This motion proceeded to a hearing on December 29, 2000. At the conclusion of the hearing, the trial judge denied the Motion to Suppress finding a lawful search incident to an arrest. Appellant and the State submitted the issue of guilt or innocence to the trial judge on the basis of departmental police reports and Appellant was found guilty. Appellant received a suspended sentence and probation for a period of one year. Appellant was ordered to complete a substance abuse screening and any counselling, therapy or education which may be appropriate. A timely Notice of Appeal was submitted in this case.

Phoenix Police Officer Green arrested Appellant without a warrant. An arrest warrant is not necessary to arrest a person who has committed a misdemeanor offense in the officer's presence and the officer has probable cause to believe that the person to be arrested has committed the offense.¹ Probable cause to make an arrest exists when the police have reasonably trustworthy information that would lead a person of reasonable caution to believe that an offense has been committed and that the person to be arrest committed it.² This Court's review on the sufficiency of probable cause is *de novo*; however, this Court must defer to the trial court's factual findings that form the basis for its legal rulings.³ And, if the trial court's

¹ State v. Bonillas, 197 Ariz. 96, 3 P.3d 1016 (App. 1999).

² State v. Spears, 184 Ariz. 277, 908 P.2d 1062, cert. denied 519 U.S. 967, 117 S. Ct 393, 136 Lawyer's Edition 2d 308 (1996); State v. Nelson, 129 Ariz. 582, 633 P.2d 391 (1981).

³ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996).

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ruling on the existence of probable cause is supported by substantial evidence in the record, this Court must affirm the trial court's ruling.⁴ This Court must also defer to the trial court's findings where there are conflicts within the evidence.⁵ The trial court as a fact finder occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses and other evidence.

Warrantless arrests are authorized by A.R.S. 13-3883 and require "probable cause to believe the person to be arrested has committed the offense." Probable cause has also been defined as "information sufficient to justify belief by a reasonable man that an offense is being or has been committed."⁶ The finder of fact must determine from the evidence what facts and circumstances the police were aware of at the time the arrest was made. The trial court must determine if these facts and circumstances were sufficient to give the police officers reasonable cause to believe that their suspect had committed an offense.⁷

Phoenix Police Officer Green testified that on June 13, 2000, he was on duty in the Royal Palm Park looking for subjects who were loitering in the park.⁸ Appellant and another individual were in the park after hours.⁹ Officer Green arrested Appellant and the other man for loitering in the park after hours and placed them under arrest.¹⁰ The trial judge's findings appear to be well-supported by the record. Appellant and the other individual were arrested for loitering in the park after hours, a misdemeanor offense.

⁴ Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

⁵ State v. Plew, 155 Ariz. 44, 745 P.2d 102 (1987).

⁶ Pharo v. Tucson City Court, 167 Ariz. at 573, 810 P.2d at 571, citing State v. Heberly, 120 Ariz. 541, 544, 587 P.2d 260, 263 (App. 1978).

⁷ State v. Boles, 183 Ariz. 563, 905 P.2d 572, review granted in part, denied in part, opinion vacated 188 Ariz. 129, 933 P.2d 1197 (App. 1995).

⁸ Reporter's Transcript of December 29, 2000, at p. 3-4.

⁹ Id. at 35.

¹⁰ Id.

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After Appellant's arrest, it was proper for Officer Green to search Appellant's person pursuant to a lawful arrest. A search incident to a lawful arrest is an exception to the Fourth Amendment to the United State Constitution's requirement of a warrant.¹¹ Officer Green discovered a marijuana pipe in one of Appellant's pockets.¹² This search occurred after Appellant's arrest and was incident to the lawful arrest. As such, the search was a proper search and the trial court correctly denied Appellant's motion.

For all of the foregoing reasons,

IT IS ORDERED affirming the trial court's order denying Appellant's Motion to Suppress, and the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.

¹¹ United States v. Robinson, 414 U.S. 218, 94 Supreme Court 467, 38th Lawyer's Ed.2d 427 (1973).

¹² Reporter's Transcript of December 29, 2000, at p. 16-17.